

46 Am. Jur. 2d Judges § 180

American Jurisprudence, Second Edition | February 2022 Update

Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

a. In General

§ 180. Peremptory challenges to judge—Criminal proceedings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

Criminal procedure statutes granting a defendant a right to automatic substitution of a judge involve a defendant's constitutional right to a fair trial and are to be construed liberally.¹

In jurisdictions permitting a peremptory judicial challenge in criminal cases, a blanket challenge of a particular judge occurs when prosecutors or public defenders instruct their deputies to peremptorily disqualify a specific judge in all cases of a particular nature; however, nothing prohibits individual attorneys who work for an agency or firm from exercising their individual discretion to repeatedly challenge a particular judge.²

A defendant who made a timely substitution request did not forfeit the right to a peremptory substitution of the judge by participating in the trial and sentencing; the defendant persisted with the substitution request throughout the proceedings and did not follow the statutory procedure for abandoning the substitution request.³

Observation:

The right to peremptory removal of a judge without substantiating a claim of actual prejudice is not of constitutional dimension, but statutory.⁴

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Footnotes

- 1 [People v. Evans](#), 209 Ill. 2d 194, 283 Ill. Dec. 651, 808 N.E.2d 939 (2004).
- 2 [Bergeron ex rel. Perez v. O'Neil](#), 205 Ariz. 640, 74 P.3d 952 (Ct. App. Div. 2 2003).
- 3 [State v. Harrison](#), 2015 WI 5, 360 Wis. 2d 246, 858 N.W.2d 372 (2015).
- 4 [State v. Gentry](#), 183 Wash. 2d 749, 356 P.3d 714 (2015), as amended, (Oct. 19, 2015).

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